

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 106 of 1990

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

CHANDULAL MANILAL DOSHI

Versus

MANIBEN MANILAL DOSHI

Appearance:

MR KS JHAVERI for Petitioner
MS KUSUM M SHAH for Respondent No. 1
NOTICE SERVED for Respondent No. 2
MR ST MEHTA APP for Respondent No. 3

CORAM : MISS JUSTICE R.M.DOSHI

Date of decision: 12/09/2000

ORAL JUDGEMENT

This revision is directed against the judgment and order dated 16th January, 1990 passed by the learned Addl. Sessions Judge, Banaskantha in Criminal Revision

Application No. 96 of 1988.

2. The Opponent no. 1 is the step-mother of the petitioner and the Opponent no. 2 is the half-brother. The Opponent no. 1 filed Criminal Misc. Application No. 7 of 1986 against the present petitioner and the opponent no. 2 - her step son and the natural son in the court of learned Judicial Magistrate, First Class, Tharad under Section 125 CrPC for maintenance. In the said application, the petitioner herein filed Application Exh. 30 and claimed that he being the step son of the applicant-mother, he was not liable to pay maintenance to the applicant-mother under Sec. 125 CrPC, and therefore, the application against him be dismissed and he be discharged. The said application was allowed by the learned Judicial Magistrate, First Class, Tharad on 1st November, 1988. The application for maintenance as against the Opponent no. 1-the petitioner herein was dismissed. Feeling aggrieved, the applicant mother preferred Criminal Revision Application No. 96 of 1988 before the Sessions Court, Banaskantha. The learned Addl. Sessions Judge by his judgment and order dated 16th January, 1990 held that even the step mother had a right to claim maintenance from his step son under Section 125 CrPC. He, therefore, allowed the revision and set-aside the order dated 1st November, 1988 made below Application Exh. 30. Feeling aggrieved, the opponent no. 1 has preferred the present revision.

3. It is an admitted fact that the petitioner herein is the step son of the Opponent no. 1 mother and the opponent no. 2 is the natural son of the opponent no. 1-mother. The question whether the word 'mother' appearing in Section 125 (1)(d) CrPC means the natural biological mother alone or whether it includes the stepmother also was a vexed question, time and again debated before several High Courts. This High Court had in the matter of Havaben Karimbhai v. Razakmiya [(19) GLR 237] and in the matter of Aher Devsi Natha & Ors. v. Rathiban Nathubhai & Anr., [1991 (2) GLR 1281] taken a view that the word 'mother' should also include a step-mother and the step mother would be entitled to maintenance from her step son under Section 125 CrPC. However, this view has been expressly over-ruled by the Hon'ble Supreme Court in the matter of Kirtikant D. Vadodaria v. State of Gujarat & Anr., [1996 (3) GLR 746]. The Hon'ble Supreme Court has held that the expression 'mother' in clause (d) of Section 125 (1) CrPC means and is referable only to the real or natural mother who has actually given birth to the child. The Court has, however, considering the benevolent purpose in

enacting the above referred Section 125 CrPC, carved out an exception in respect of the step mother who does not have a child of her own and whose husband has either died or is unable to maintain her. Such step mother can have a claim for maintenance against the step sons. The above judgment has been followed by this Court [i.e., myself] in the matter of Karodiben v. Rajubhai Mahendrasingh, [1997 (1) GLH 282].

In view of the above expression of law, the petitioner who is admittedly the step son of the applicant-opponent no. 1 cannot be held to be liable to pay maintenance to the applicant under Section 125 CrPC. Further, the applicant-mother has a real son against whom also, the applicant has lodged claim for maintenance. In that view of the matter, the petitioner cannot be held liable to pay maintenance to his step mother even as an exceptional case.

The learned Magistrate was, therefore, right in dismissing the application for maintenance made by the Opponent no. 1 as against the present petitioner. The revision is, therefore, allowed. The judgment and order dated 16th January, 1990 of the learned Addl. Sessions Judge, Banaskantha passed in Criminal Revision Application No. 96 of 1988 is quashed and set-aside. The order dated 1st November, 1988 made by the learned Judicial Magistrate, First Class, Tharad below Application Exh. 30 in Misc. Criminal Application No. 7 of 1986 is restored. Rule is made absolute.

Prakash*